

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KENNETH COLVIN, JR.,

Plaintiff,

v.

Case No. 2:09-cv-96
HON. ROBERT HOLMES BELL

MICHAEL MARTIN,

Defendant.

REPORT AND RECOMMENDATION

Defendant Michael Martin has filed a motion for judgment on the pleadings to dismiss plaintiff's claims brought under the Eighth Amendment, the Fourteenth Amendment, and the RLUIPA. Defendant argues that plaintiff failed to properly present these claims in his amended complaint. On August 16, 2010, plaintiff filed what he titled "First Supplement Complaint." In the order allowing the Supplemental Complaint the court indicated that it appeared that plaintiff was seeking to add a Religious Land Use and Institutionalized Persons Act claim.

It is noted that the Case Management Order set a motion cut-off date of December 6, 2010. This matter was originally scheduled for trial on March 23, 2011. That date was adjourned and this matter is now set for trial on July 25, 2011. Defendant filed this motion on March 3, 2011. Defendant has never moved for an extension of the motion cut-off date. Defendant's motion was filed almost three months after the motion cut-off date and much too close to the originally scheduled trial date. Defendant was clearly aware that plaintiff was attempting to add supplemental claims including a claim under the RLUIPA as early as August 16, 2010.

For that reason, it is recommended that defendant's motion for judgment on the pleadings (Docket #197) be denied.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within fourteen (14) days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR 72.3(b). Failure to file timely objections constitutes a waiver of any further right to appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley
TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: April 21, 2011